

## Draft Response to ERG Public Consultation on Broadband Market competition.

### 1) Do you think the market data analysis adequately reflects the market development in your country?

Yes, but we believe that the empirical evidence shows clearly that while penetration is growing in Italy, only the incumbent operator is benefiting from the growth.

The reasons will be explained in detail below, but it has to be stated the competition is heavily restrained by the incumbent pre-emption and retention activities, its constant anticompetitive exploitation of its market power, and its tendency to strain the regulatory process to its limits to impair the potential growth of competitive asset of the market.

### 2) Do you think the country case study analyse the situation adequately in your country?

Even though a certain level of competition has been accomplished in Italy, the case study highlights that the incumbent operator has a steady market share in the broadband market of 70%.

Furthermore, as indicated in empirical data, while the penetration rate of broadband is increasing (from 25% in 2005 to 28% in 2006), the market share of alternative operator has NOT increased. Some additional empirical data can be found on the TELECOM ITALIA 9M '06 Financial Results, as shown below.

Total Broadband portfolio				
Number of access lines ('000)				
	Dec '04	Dec '05	Sep '06	Δ Sep. vs Dec '05
Wholesale	599	890	1,075	+185
Retail	3,411	4,817	5,382	+565
<b>Total Domestic</b>	<b>4,010</b>	<b>5,707</b>	<b>6,457</b>	<b>+750</b>
International BB	420	1,313	1,718	+405
<b>Wireline Total</b>	<b>4,430</b>	<b>7,020</b>	<b>8,175</b>	<b>+1,155</b>

While the retail net acquisition boosted a +9% in 9 months the wholesale new lines are below 3%.

The trend is even more evident in the 3<sup>rd</sup> quarter 2006: while during the 2<sup>nd</sup> quarter 2006, the wholesale access lines accounted for 17% of total new BB lines, in 3<sup>rd</sup> quarter 2006, the wholesale access lines **were only 2% of total new BB lines.**

The case studies indicated that the current structure of the broadband market is to be related mainly to 3 reasons: 1) the general obligations stemming from the analysis of market 12, and to a lesser extent from the analysis of market 11; 2) the particular technical and economic implementation of those obligations and 3) the regulation of the migration process from bitstream to other wholesale products and vice versa.

While we believe that a certain competition has been reached at national level, we believe that these reasons cannot be considered as the main reasons for the current market structure.

Indeed, the strong pre-emption practices (e.g. the recent launch of a non-replicable fixed-mobile integrated offer, named Unico, rightly limited by the NRA) put in place by the incumbent, as well as the anti-competitive and excluding conduct of the former monopolist are certainly hindering the full competitive potential of the market.

A more detailed opinion is described below.

#### **Market 12 measures.**

As for Market 12 measures are concerned, the anticompetitive attitude of the former monopolist is affecting its implementation.

Below, a set of critical issues that needs to be taken into account.

1. In fact, current market 12 bitstream access wholesale offer has been delivered by Telecom Italia only in September 2006 and the service will be available as soon as such offer will be adjusted.
2. With regard to Market 11 it has to be stated that alternative operators face a powerful pre-emption policy by the incumbent, to the detriment of the competitiveness of the market.

#### **Market 12 technical and economic implementation not yet in place.**

The incumbent operator is using instrumental delays on the technical and economic implementation.

A very unique situation then has been registered in Italy: while moving to a cost oriented base for the definition of economic conditions, the wholesale price proposed by the former monopolist resulted to be higher than the retail minus price that was in place so far.

#### **3) Do you think that the overall conclusions regarding the ladder of investment follow from the data analysis and the country case studies?**

We fully agree that the ladder of investments needs to be adjusted to national circumstances, in particular to the willingness of the incumbent to accept a competitive environment instead of enjoying rent positions. In addition, to foster

investments on alternative networks for inter and intra modal competition models, and to promote investments in new innovative infrastructures, the existing regulatory framework should encourage conditions to recover the investments, specially to new entrants that, though being efficient, still need to recover investment.

**4) Do you think another regulatory model can better explain the development of European broadband markets? If yes, which one and why?**

We believe that the current Italian broadband market development:

1. is to a certain extent affected by strong focus on mobile services specially for what concerns Telecom Italia, that is a vertically integrated operator (and that currently enjoys very high termination rates and is the main fixed to mobile provider)
2. is therefore slowed as for the penetration growth rate on fixed broadband lines
3. whereas the infrastructure based competition is hindered by the very large dominant player that pursues a foreclosure of the market, by exploiting to the limit its considerable position.

Thus, to ensure a sound promotion of the broadband penetration, and a fair competition among incumbent and alternative infrastructures, it is crucial that investments be safeguarded and fostered, through appropriate measures that take into account different competitive ability as well as economic structures and scales (e.g. new investments by alternative operators cannot be recovered in very short timeframes, even though they certainly constitute the most important asset for the promotion of competition and represents the true richness of the competitive arena.) By way of example, cost oriented termination rates should be adequately ensured.

**5) How do you see the issue of inter-modal competition (competition between cable and DSL)?**

The Italian market has not developed any cable infrastructure in the past, therefore, the competition is concentrated on the copper local loop, therefore we believe that regulation should ensure that competition should be effectively enabled on the existing former monopolist infrastructure (and, of course, the alternative operators networks)

**6) Please feel free to make other general comments and to provide reasons to your opinion.**

We believe that even if the current regulatory regime provides for the needed measures, certain specific issues need to be addressed to ensure that broadband take up is effectively favoured.

In particular, it has to be noted that the incumbent unwillingness to participate in the regulatory process is able to reduce the effectiveness of existing measures, and its behaviour dilutes the potential benefits of ex ante regulation.

We are currently facing an explanatory anticompetitive behaviour with regard to the implementation of the incumbent's bitstream offer: it is not yet in force, mainly due to the following problems:

1. Lack of transparency on technical and economic elements by the incumbent offering access to its network (i.e. absence of transparency on the incumbent's network architecture, its modifications and its topology, with increasing risk for the investments made by alternative operators).
2. Excessive delay in bitstream offer implementation due to the tendency of the former monopolist to strain the regulatory process at its limits favoring interim regimes that constitute an advantage for the incumbent and a detrimental level of uncertainty for other players (e.g final decision taken by AGCOM in February 2006, technical table working until September 2006; the service will not be available as long as Telecom Italia's new RIO will be adjusted).